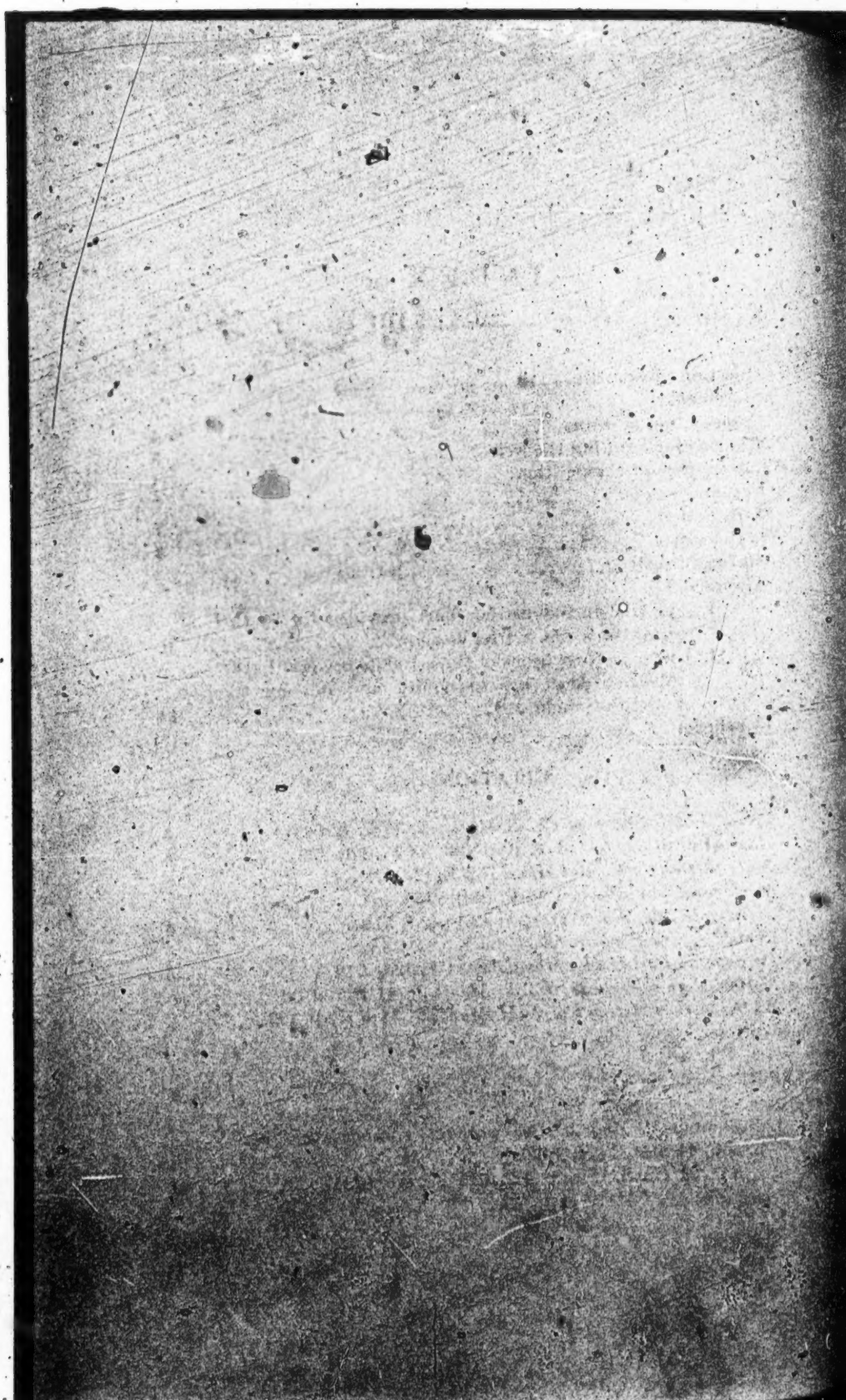
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In the Supreme Court of the United States

OCTOBER TERM, 1939

No. ——

LETUS N. CROWELL, AS DEPUTY COMMISSIONER FOR the Seventh Compensation District of the United States Employees' Compensation Commission, petitioner

v.

CHARLES LONDON

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF

The Solicitor General, on behalf of Letus N. Crowell, Deputy Commissioner for the Seventh Compensation District of the United States Employees' Compensation Commission, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above case on November 17, 1939 (R. 302), affirming the decision of the United States District Court for the Southern District of Alabama.

relationship between the claimant and appellee was the one fo
in the above set out quotation from the deputy commissioner's or
That was a statement of his legal conclusion that the relationsh
mentioned existed. What facts he considered to have the re
of creating that relationship are not disclosed. Though in the
306 hearing before him there was testimony to prove facts fr
which the existence of that relationship arose, it was not m
to appear that the deputy commissioner in reaching his legal co
clusion had in mind such facts, or that he was influenced by th
evidence or accorded to it any probative value. There was noth
before the court to negative the inference that the stated legal co
clusion of the deputy commissioner was based entirely on what h
or some other person saw or heard in an investigation or inqui
other than in the hearing in which was adduced evidence which
brought before the court. What was seen or heard in such oth
investigation or inquiry was not made known to the court in any wa
The record does not show that the deputy commissioner found an
fact or state of facts having any bearing on the question of th
existence vel non of the relation of employer and employee betwee
the appellee and the claimant. It does not show that evidence pr
duced in the hearing before the deputy commissioner supported a
conclusion of fact reached by him with reference to any relation b
tween the claimant and the appellee. This being so, it does not see
that it properly can be affirmed that evidence disclosed to the co
supported any conclusion of fact on that subject actually reache
by the deputy commissioner. It can not well be inferred or suppos
that it was intended to require a court to give conclusive effect to
finding of fact made by an executive official when it is not mad
known to the court what that finding was, or that evidence whic
was before that official supported that finding.

We conclude that the court did not err in its above-mentioned ru
ings. The decree is affirmed.

307 In United States Circuit Court of Appeals

No. 5802

LETUS N. CROWELL, AS DEPUTY COMMISSIONER FOR THE SEVENTH COMPENSATION DISTRICT OF THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION; AND J. B. KNUDSEN

VERSUS

CHARLES BENSON

Judgment Nov. 17, 1930

This cause came on to be heard on the transcript of the re
from the District Court of the United States for the Southern D
trict of Alabama, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, affirmed.

[Clerk's certificate to foregoing transcript omitted in printing.]

Supreme Court of the United States

No. 730, October term, 1930

LEWIS N. CROWELL, AS DEPUTY COMMISSIONER FOR THE SEVENTH COMPENSATION DISTRICT OF THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION, PETITIONER

vs.

CHARLES BENSON

Order allowing certiorari

Filed March 16, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Supreme Court of the United States

No. 731, October Term, 1930

LEWIS N. CROWELL, AS DEPUTY COMMISSIONER FOR THE SEVENTH COMPENSATION DISTRICT OF THE UNITED STATES EMPLOYEES' COMPENSATION COMMISSION AND J. B. KNUDSEN, PETITIONERS

vs.

CHARLES BENSON

Order allowing certiorari

Filed March 16, 1931

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:]

[illegible] No. 35682. U. S. Circuit Court of Appeals, Fifth Circuit. [illegible] No. 730. Lewis N. Crowell, as deputy commissioner for the [illegible] compensation district of the United States Employees' Com-

QUESTION PRESENTED

Whether, in a suit brought in a United States District Court under Section 21 of the Longshoremen's and Harbor Workers' Compensation Act to set aside an award made by a Deputy Commissioner, there is a right of trial *de novo* of the issues of fact determined by the Deputy Commissioner.

STATEMENT

This suit was brought in the United States District Court for the Southern District of Alabama by Charles Benson, the owner of a barge, under Section 21 (b) of the Longshoremen's and Harbor Workers' Compensation Act, to set aside an award made by the Deputy Commissioner of the United States Employees' Compensation Commission in favor of J. B. Knudsen, who was injured on the barge.

The claimant, while working on a barge which was moored in the navigable waters of the Mobile River and belonging to Charles Benson, was seriously injured by certain tackle giving away. (R. 3.) Knudsen filed a claim for compensation before the Deputy Commissioner under authority of the Longshoremen's and Harbor Workers' Compensation Act. (R. 8.) The owner of the barge filed an answer denying the relationship of employer and employee at the time of the injury and denying liability for the payment of compensation. (R. 153, 154.) At this hearing Knudsen testified

that he was employed by Benson and while under such employment the injuries were sustained (R. 197–199, 202, 210), and other testimony on his behalf was to the same effect (R. 163–184). The evidence of Benson, owner of the barge, and other witnesses on his behalf, was to the effect that the claimant, Knudsen, was not in the employ of Benson at the time the injuries were sustained. After a full hearing on the merits before the Deputy Commissioner, at which both sides were represented, and witnesses were produced and examined by each side (R. 161–278), the Deputy Commissioner made findings of fact sustaining the contention of Knudsen that he was in the employ of Benson, owner of the barge, at the time of the accident (R. 133), and made an award in favor of the injured employee (R. 135). Benson filed a bill in equity in the United States District Court under Section 21 (b) of the Act seeking to have the award set aside on the ground that it was not in accordance with law, in that Knudsen was not in his employ at the time of the injury. (R. 2–7.) The District Judge transferred the suit to the admiralty side of the court (R. 46), and after holding a trial *de novo* (R. 50–132), entered a decree setting aside the award of the Deputy Commissioner and permanently enjoined the enforcement of same (R. 278–280). There was filed in evidence the record made before the Deputy Commissioner, but this was not considered by the District Judge, who upon the evidence taken *de*

novo found, contrary to the finding of the Deputy Commissioner, that Knudsen was not in the employ of Benson. (R. 279.)

The District Court held that unless there was the right of a trial *de novo* the "act was beyond the power of Congress and is void" (R. 40), and that in order to hold the Act constitutional and not in violation of Article III, Section 2 of the Constitution, and of the Fifth Amendment, it must follow that the District Court may disregard entirely the proceedings before the Deputy Commissioner and hear the case as upon an original proceeding or as a trial *de novo* (R. 35, 44).

The Circuit Court of Appeals held that the testimony given before the District Court established that the injured claimant was not in the employ of the barge owner at the time the injuries were sustained; that there was a right of trial *de novo* in the District Court on the admiralty side, and affirmed the rulings of the District Court (R. 296-302).

SPECIFICATION OF ERRORS

The Circuit Court of Appeals erred—

I. In holding there was the right of a trial *de novo* in the District Court and that the Act was unconstitutional unless there was that right.

II. In holding that the injunction proceedings authorized by the Act should be heard in admiralty rather than in equity.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is in direct conflict with the decisions of three other Circuit Courts of Appeals. The Circuit Court of Appeals for the Fourth Circuit in *Wheeling Corrugating Co.* v. *McManigal, Deputy Commissioner,* 41 F. (2d) 593, held that there is no right of trial *de novo* in the District Court, after considering the opinion of the District Court in the instant case. The Circuit Court of Appeals for the Ninth Circuit in *Northwestern Stevedoring Company* v. *Marshall, Deputy Commissioner,* 41 F. (2d) 28, and the Circuit Court of Appeals for the Third Circuit in *McCahan Co.* v. *Norton, Deputy Commissioner,* 43 F. (2d) 505, reached the same conclusion and held the Act constitutional.

Until the decision of the District Court in this case, the District Courts had uniformly held that there was no right of trial *de novo* in the District Court, that the District Court was confined in its consideration of the case to the record made before the Deputy Commissioner and to a determination of the validity of the administrative award. Some of those cases are: *Obrecht-Lynch Corp.* v. *Clark,* 30 F. (2d) 144 (D. Md.); *Merchants' & Miners' Transp. Co.* v. *Norton,* 32 F. (2d) 513 (E. D. Pa.); *Joyce* v. *Deputy Commissioner,* 33 F. (2d) 218 (D. Me.); *Pocahontas Fuel Co.* v. *Monahan,* 34 F. (2d) 549 (D. Me.); *Grays Harbor Stevedore Co.* v. *Marshall,* 36 F. (2d) 814 (W. D. Wash.); *Howard*

v. *Monahan*, 31 F. (2d) 480, 33 F. (2d) 220 (S. D. Tex.).

2. The Circuit Court of Appeals held that the suit to set aside an award of a Deputy Commissioner must be on the admiralty side of the court instead of in equity. That ruling is likewise contrary to the above decisions in the other Circuit Courts of Appeals and the uniform rulings in the District Courts. In conferring jurisdiction on the United States District Courts in Section 21 (b) of the Act, Congress provided that the compensation order could be suspended or set aside through injunction proceedings, mandatory or otherwise. As the purpose of the Act was to provide a speedy review by the courts of an administrative award, the proceedings should be on the equity side. A trial of the issues *de novo* would involve the determination of questions cognizable in admiralty, but the review of an administrative order does not.

Wherefore, it is respectfully submitted that this petition should be granted.

THOMAS D. THACHER,
Solicitor General.

FEBRUARY, 1931.

BRIEF IN SUPPORT OF THE PETITION

OPINIONS BELOW

The opinion of the District Court (R. 33) is reported in 33 F. (2d) 137. The opinion of the Circuit Court of Appeals (R. 296) has not been reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on November 17, 1930. (R. 302.) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

STATEMENT

A statement of the facts, the questions involved, and the errors assigned will be found in the petition.

STATUTES INVOLVED

Section 21 of the Longshoremen's and Harbor Workers' Compensation Act (Act of March 4, 1927), c. 509, 44 Stat. 1424, 1436 (U. S. C. Sup. III, Title 33, Sec. 921), provides:

> (a) A compensation order shall become effective when filed in the office of the deputy commissioner as provided in section 19, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subdivision (b) of this section, shall become final at the expiration of the thirtieth day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the deputy commissioner making the order, and instituted in the Federal district court for the judicial district in which the injury occurred (or in the Supreme Court of the District of Columbia if the injury occurred in the District). The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the United States. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three days' notice to the parties in interest and the deputy commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

(c) If any employer or his officers or agents fails to comply with a compensation order making an award, that has become final, any beneficiary of such award or the deputy commissioner making the order, may

apply for the enforcement of the order to the Federal district court for the judicial district in which the injury occurred (or to the Supreme Court of the District of Columbia if the injury occurred in the District). If the court determines that the order was made and served in accordance with law, and that such employer or his officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or by other proper process, mandatory or otherwise, to enjoin upon such person and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall not be instituted otherwise than as provided in this section and section 18.

Sections 14 and 18–28 of the Act provide in detail the powers and duties of the Deputy Commissioner in connection with making an award. Section 22 provides for modification of an award by the Deputy Commissioner on his own initiative or on application of an interested party under the procedure of Section 19. Section 23 provides that the Deputy Commissioner on a hearing is not bound by common law or statutory rules of evidence or by technical or formal rules of procedure except as specifically provided in the Act. Sections 24 and 25 provide for the attendance of witnesses, the taking of testimony by deposition, and the payment of

witnesses. Section 27 provides that the Deputy Commissioner shall have power to preserve and enforce order during any such proceedings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses or the production of documents, records, and other evidence; to examine witnesses and to do all things conformable to law which may be necessary to enable him to discharge the duties of his office and arrive at a proper conclusion as to whether an award is payable for the alleged injury. Under the Act the Deputy Commissioner is given broad and designated powers for determining the merits of a claim filed before him by an injured employee.

ARGUMENT

I

THE TRIAL IN THE DISTRICT COURT PROVIDED FOR BY THE STATUTE IS NOT A TRIAL DE NOVO

In holding that there was the right of a trial *de novo* to determine whether the award of the Deputy Commissioner was made "in accordance with law," the Circuit Court of Appeals adopted the ruling of the District Court that the Act was unconstitutional unless such right existed, and in support of that conclusion held that a suit brought in the District Court must be on the admiralty side rather than in equity. The Circuit Courts of Appeals for the Third, Fourth, and Ninth Circuits had

previously reached a conclusion to the contrary, and the uniform rulings of the District Courts had been in accord with these decisions. (See pp. 4, 5, *supra.*)

The purpose of the Longshoremen's and Harbor Workers' Compensation Act is to extend to workers upon the navigable waters of the United States, who can not be protected by State legislation, the benefits of a compulsory compensation system for disability or death resulting from injury received in the course of their employment. One of the chief benefits of the Act is that it eliminates the delay and expense incident to litigation. This benefit would be largely, if not entirely lost, if upon application for injunction the courts should be under the necessity of hearing *de novo* the claim for compensation or of weighing the evidence and passing upon the facts. If such were the law, the courts would be appealed to in practically every contested case, counsel would be as necessary as formerly, and the provisions for hearing before the Deputy Commissioner, instead of eliminating the delay of litigation would increase it. This, we submit, was not the intention of Congress. An additional reason for the view that Congress did not intend a hearing *de novo* in the District Court with a review of the facts by the court is found in Section 22 of the Act, which provides that the Deputy Commissioner upon his own initiative or

upon application of any party in interest may review the original order and upon the ground of changed conditions issue a new order terminating, continuing, increasing, or decreasing the compensation order.

If an employee or the employer has the right of a trial *de novo* in the District Court it follows that the provisions of the Act for hearings before the Deputy Commissioner and defining his powers in that connection are meaningless and would become nullified because the unsuccessful party before the Deputy Commissioner would in practically all cases take the case into court under Section 21 (b) of the Act and insist on a trial *de novo;* or to go one step further, either party could ignore the process issued by the Deputy Commissioner, decline to appear before him, and in the event of an adverse award go into the District Court and demand a trial *de novo* with the result that the proceeding before the Deputy Commissioner as provided for in the Act would be wholly ineffective. In establishing the procedure which it did in the Longshoremen's Act and conferring certain powers and duties on the Deputy Commissioner in connection with hearings and making awards, Congress doubtless had in mind a speedy determination of the rights of an injured longshoreman without the usual delays incident to litigation on the facts in the courts. Section 19 of the Act provides that within ten days after a claim is filed before him the Deputy Com-

missioner shall notify the interested parties that such claim has been filed, and if a hearing on the claim is ordered by the Deputy Commissioner notice shall be given the interested parties at least ten days in advance of such hearing and the Deputy Commissioner must, within 20 days after such hearing, reject a claim or make an award. Section 21 provides that a compensation order shall become final within thirty days unless there is filed within that period injunction proceedings in the United States District Court as provided in Section 21 (b). All the provisions of the Act dealing with the manner in which a remedy is given to an injured employee and the limited time within which action must be taken indicate a clear intention on the part of Congress that the facts should be determined by the Deputy Commissioner with a view to properly determining the rights of an injured employee, thereby avoiding the usual delays incident to litigation in the courts. The interests of the adverse party before the Deputy Commissioner are properly protected under Section 21 (b), which provides that the order of the Deputy Commissioner may be set aside if not made in accordance with law, and the action to be taken by the courts is confined within those limits. If there is some competent evidence before the Deputy Commissioner to sustain his award the District Court should affirm the award without holding a trial *de novo*.

II

UNDER THE PROVISIONS OF THE ACT SUITS BROUGHT IN THE DISTRICT COURT ARE IN EQUITY AND NOT ON THE ADMIRALTY SIDE

The Circuit Court of Appeals held that the suit in the District Court should be in admiralty, and used this conclusion in support of its holding that there was a right of trial *de novo* in the District Court. Section 5 provides that liability of an employer under Section 4 of the Act shall be exclusive and in place of all other liability of such employer to the employee or anyone entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation and the injuries result in death to the employee, election may be made to claim compensation under the Act or to maintain an action at law or in admiralty for damages on account of such injury or death. Section 21 provides for the institution of injunction proceedings, mandatory or otherwise, and that a temporary injunction may be entered pending the determination of the merits of the claim and a conclusion as to whether the award of the Deputy Commissioner should be suspended or set aside in whole or in part. The Circuit Courts of Appeals for the Third, Fourth, and Ninth Circuits and the District Courts, *supra*, have uniformly held that these suits should be heard on the equity side of the court.

CONCLUSION

It is respectfully submitted that because of the conflict of decisions on the questions presented in this case the petition for a writ of certiorari should be granted.

THOMAS D. THACHER,
Solicitor General.

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W. CLIFTON STONE,
ERWIN N. GRISWOLD,
Attorneys.

FEBRUARY, 1931.

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